STANDING COMMITTEE ON CYBERSPACE LAW

Minutes of Meeting

October 13, 2005

A meeting of the Committee was held at 9:30 a.m. on October 13, 2005 in the Palo Alto offices of Pillsbury Winthrop Shaw Pittman and by teleconference.

Members attending were Marla Hoehn, Maureen Young, Rudy Guyon, Paul Ambrosio, Matthew Cooney, Michael Dergosits, Francoise Gilbert, Sue Krenek, Winston Krone, Denise Olrich, Kristie Prinz, David Tollen and Konrad Trope.

Also attending were Larry Doyle (section legislative representative), Rob Hale, Joe Aglioso, Richard Elbrecht, Scott Hervey, Steven Hollman, John Jaffe, Bennett Kelley, Clara Martin, and Ellen _____,.

I.      Welcome and Introduction of Members

        Marla welcomed the Committee members, advisory members and constituents who attended the meeting. The members, advisory members and some of the constituents each provided a brief introduction to themselves, with an explanation of where they practice, their type of practice and their interest in the Committee. Committee members who did not attend this meeting and others will be asked to do likewise at the November meeting.

        Michael D. requested that the roster be sent to him for posting on the Committee's website.

II.     Introduction to Cyberspace Law Committee

        Marla introduced the officers of the Committee: she and Andy Serwin are co-chairs of the Committee, and Rudy Guyon and Maureen Young are the vice chairs of the Committee. Marla also noted that she sent around the proposed meeting schedule for this term and asked that if anyone has any concerns or questions about it to contact her.

        Marla reported on the Committee's goals for this term, namely:

        1.      To increase the Committee participation in the legislative process.
                For the past couple of years, the Committee has conducted one of its meetings in Sacramento, to meet with legislators and staffers to talk about pending cyberspace legislation and initiatives and how the Committee might be involved in the legislative process by commenting on legislation, etc. Last term, the Legislative and Regulatory Subcommittee also reviewed pending state bills and discussed whether the Committee had any input it could provide to the legislature. With respect to several bills, the Committee did in fact provide some feedback to the sponsoring legislators. The Committee would like to expand on these efforts this term.

2.     To increase outreach to and participation by the Committee's constituency.

The Committee has begun this process by inviting constituents to the Committee meeting.  The Committee plans to be more active in keeping constituents informed and involved in the work of the Committee, since the constituents will likely provide refreshing new ideas and additional resources and energy to the Committee.

3.     To co-sponsor panels and other activities with other committees.

The interests of the Cyberspace Committee coincide in many respects with several other State Bar Sections, such as the Intellectual Property Law Section (and various of its standing committees).   The Committee would like to explore opportunities to work together with the other sections and committees to co-sponsor events, publications and other outreach activities.

4.     Further upgrade website to become an event more relevant source.

The Committee would like to enhance its website so that it contains up-to-date, valuable information regarding cyberspace law to its constituents and users, in order to draw more users to the site.

III.     Subcommittees

A.     There was a discussion about what subcommittees are needed by the Committee in order to implement its goals for the term.  Marla listed the subcommittees for the prior term.  The general subcommittees during the last term were Legislative and Regulatory; Programs and Publications; Communications and Technology; and Speakers' Committee.  The topical subcommittees were Intellectual Property, E-commerce and Privacy, Jurisdiction, and Telecommunications (including VoIP).  Of these subcommittees, only a few were very active last term.   For example, the E-Commerce and Privacy and Leg/Reg Subcommittees were quite active, holding meetings almost every month.  The E-Commerce and Privacy Subcommittee also facilitated the co-sponsorship of the Committee of a two-day program with Law Seminars International on Internet advertising and marketing.

There was further discussion about what made these subcommittees successful.  It was generally agreed that having active chairs were vital, and Rudy reported that co-chairing with Francoise made the chairing position much easier.  In addition, he said that having complementary skills as the other chair was very helpful, as was  having an established time for the meeting each month so members knew when to expect the meeting.

It was agreed that the chairs and vice chairs would discuss the list and narrow the list of subcommittees based on interest expressed by members.  If a member agreed to chair a subcommittee, the subcommittee would be formed.  David Tollen suggested that it would be helpful for each subcommittee to have specific goals to achieve this term, for example, publishing current events in a monthly e-blast or sponsoring so many programs.

B.      Next the discussion turned to the Committee website.   Michael D. provided some background on how the website is set up, and that Michael Mullen currently is the webmaster to whom all postings need to go.  Michael D. suggested that it would be helpful to see what other committees are doing on their websites, and further thought that Susan Orloff might be a good resource for that.  Marla agreed to assist Michael in this.

C.      Denise Olrich gave a report of the state bills that passed and have been signed into law in the recently-concluded legislative session.   Included among these bills are the Anti-Phishing Act of 2005 and an amendment to the state's anti-spam law to add criminal penalties.  Denise agreed to make updates to her chart of state legislation, and Michael D. agreed to forward on to Michael M. for posting to the website.

D.      There was further discussion regarding how the Committee might be able to make a contribution to the legislative process.  Rob Hale suggested that the Leg/Reg Subcommittee meet to strategize where we can make a contribution.  Larry Doyle suggested that the Committee might be able to contribute by offering clean-up suggestions on legislation that has been enacted; we do not necessarily have to propose new legislation in order to have an impact.  Larry also offered to contact Senator Kevin Murray and Senator Debra Bowen, or their staffers, to get an idea about where these Senators, who are particularly active in the cyberspace area, might be considering new legislation.

E.      Maureen Young gave a report on the recent <u>American Bankers Association v. Lockyer</u> decision regarding the sharing of personal information by financial institutions with their affiliates, and whether the state law (SB1) is preempted by the federal Fair Credit Reporting Act (the decision held that it is preempted).  Maureen also reported on recent guidelines for financial institutions under which banking agencies are requiring financial institutions to move toward multi-factor authentication of customers (beyond just user name and password) accessing Internet accounts by the end of 2006.  Maureen reported that not many banks are set up to handle this, although there are some commercial software solutions that provide secondary authentication (by use of challenge questions plus allegedly secure cookies to identify the server, etc.).  It is possible other online transaction providers will feel pressure to also move to multi-factor authentication, based on these guidelines.  There was some discussion about how online security would differ in an ATM environment and "know your customer" rules.

IV.    <u>Presentations on VoIP</u>

Paul Ambrosio discussed the <u>BrandX</u> case in which the U.S. Supreme Court held that cable broadband service is an unregulated information services, instead of a telecommunications service under the Communications Act.  As a result of this decision, the Federal Communications Commission has adopted policies to eliminate transmission component sharing requirements, thus allowing DSL providers to kick off non-affiliated ISPs from their lines, although they could not do this for a one-year period.  It is unclear

what the long-term effect of these events will have on the Internet marketplace. Predictions range from a marketplace dominated by a few "big-boys" to incentiving cable and telephone companies to allocate more resources for infrastructure build-out.

Next, Konrad discussed security implications of VoIP. Because VoIP is an information service, it is free from regulations and wiretap compliance issues. He discussed how voice data is transmitted (broken up in packets) over the Internet which makes it difficult to determine where a conversation comes from. He said there is also risk in phone calls and data being attacked by viruses. He also noted that with Sarbanes-Oxley and Gramm-Leach-Bliley and other regulatory requirements being more broadly applied to the business community, companies are well advised to have in place a comprehensive enterprise security program and to carefully examine whether VoIP, with its inherent security risks, would have any place in such a program.

Thanks to Paul and Konrad for these presentations.

To Do Items
1. Michael D. to have the Committee roster posted to the website.

2. Denise to update state legislation chart, and Michael D. to post to website.

3. Michael D. (with Marla) to check with Susan O. on what other committees are doing with their websites.

4. Officers are to meet to discuss subcommittee list; all members are encouraged to notify Marla which subcommittees they want to join, including in particular any they wish to chair.

5. Larry to contact Sen. Murray and Bowen offices on their plans for legislation in the cyberspace area during the upcoming legislative session.

Next Meeting. The next meeting of the Committee will be at 9:30 a.m. on Thursday, November 10, in person at the Pillsbury Winthrop Shaw Pittman offices in Palo Alto.